Supreme Court, U.S.
FILED
061512 APR 6 - 2007
OFFICE OF THE CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED
STATES
OCTOBER TERM 2006

RICKY EUGENE MINNIFIELD
PETITIONER

V.

LOUISIANA STATE DEPARTMENT OF
EDUCATION, et al
RESPONDENTS

ON PETITION FOR A WRIT OF
CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE 5TH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RICKY EUGENE MINNIFIELD, PRO SE
302 TANGLEWOOD DRIVE
MONROE, LOUISIANA 71202
(318) 330-9119

QUESTIONS PRESENTED

1. Can the State of Louisiana and any of it' parishes use federal, state, or local provisions to "**ultimately**" allow Racial Discrimination in it's Public Education System?

2. Can the State of Louisiana and any of it's parishes use fraud to "**ultimately**" allow Racial Discrimination in Public Education?

LIST OF PARTIES

The petitioner in this case is Ricky Eugene Minnifield, pro se.

The respondents in this case are:

1. Louisiana State Department of Education.
2. Ouachita Parish School Board
3. West Monroe High School

The respondents were represented by:

1. Louisiana Department of Justice
2. Louisiana Attorney General's Office
3. Noah, Smith & Johnson, L.L.P.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i
LIST OF PARTIES..... ii
TABLE OF AUTHORITIES.....iv-v
INTRODUCTORY PARAGRAPH.....v
OPINIONS BELOW.....1
JURISDICTION 1
CONSTITUTIONAL AND
STATUTORY PROVISIONS.....1-2
STATEMENT OF THE CASE.....2-8
Ultimate Racial Discrimination
in Louisiana
Public Education.....2-6

Fraud to allow Ultimate
Racial Discrimination in
Louisiana Public Education.....7-8

REASONS FOR GRANTING THE WRIT 8-9
The decisions below conflicts
with decisions of this Court
allowing Racial Discrimination
in Public Education.....8

The importance of the
elimination of Ultimate Racial
Discrimination in Public Education.....9

CONCLUSION.....9-10
APPENDIX with
Table of Contents 11-30

TABLE OF AUTHORITIES

Anderson v. Martin,
375 U.S. 399, ...5, 12
Brown v. Board of Educ.
Of Topeka Kan,
349 U.S. 294 .....6, 12-13
Coddington v. Pensacola
& G. R. Co.
103 U.S. 409 .....7, 13-14
Hanger v. Abbott,
73 U.S. 532 .....5, 13
Holmberg v. Armbrecht,
327 U.S. 392 .....7, 13
McLaughlin v. State of Fla.,
379 U.S. 184 .....8, 12
Monroe v. Board of Com'ers
of City of Jackson, Tenn.
391 U.S. 450 .....3, 12
Norwood v. Harrison,
413 U.S. 455 .....3-4, 12
Order of Railroad Telegraphers
v. Railway Express Agency,
321 U.S. 342 .....5, 13
Philadelphia, W. & B.R. Co.
v. Howard,
54 U.S. 307.....7,8, 13
Regents of University
of California v. Bakke,
438 U.S. 265, ...4, 12
Rindge Co. v.
Los Angles County,
262 U.S. 700,.....4, 13
U.S. v. State of La,
364 U.S. 500.....6, 12

Federal Statues

28 U.S.C. sec 1254(1) 1

United States Constitution

Thirteenth Amendment 1,2
Fourteenth Amendment 1,2

Louisiana State Constitution

Art 1 sec. 3 2
Art 1 sec. 12 2

INTRODUCTION

This petition for a writ of certiorari seeks this Court's review of the judgment of the United States Court of Appeals for the Fifth Circuit. The issue, a nationally important matter, relates to racial discrimination in public education and constitutional limitations on the power of the states that "ultimately" allow Racial Discrimination in Public Education.

OPINIONS BELOW

The opinion and judgment of the Fifth Circuit Court of Appeals affirming the judgment of the district court appears in the appendix pages 15-16, but it was not published. The judgment of the district court appears in the appendix page 17-18. The issue of racial discrimination in public education was never addressed by the court below. The courts below affirms provisions such as lack of standing, mooted upon graduation and time barred, that are invalid and unconstitutional. They allow ultimate racial discrimination in public education. This is an injustice to this Court's authority and African Americans, indeed.

JURISDICTION

This case was filed in the U.S. District Court for the Western District of Louisiana December 5, 2005. The judgment of the District Court was entered on June 23, 2006. The judgment of the 5th Circuit Court of Appeals was entered on February 15, 2007. The jurisdiction of this Court is invoked under the Thirteenth and Fourteenth amendments to the U.S. Constitution and 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The judgment of the United States Courts of Appeals was entered on February 15, 2007 . All provisions of federal, state, or local law requiring or permitting racial discrimination in public education must yield to principle that such discrimination is unconstitutional; also, no person shall be denied the equal protection of the laws; see U.S.C.A. Const.

Amend 14. One purpose of the 13th amendment to the Federal Constitution was to raise the colored race from the conditions of inferiority and servitude into perfect equality of civil rights with all other persons within the jurisdiction of the states. Louisiana denies petitioner's rights to individual dignity and freedom from racial discrimination in public education. "No law shall discriminate against a person because of race..."; see Article I Section 3 Constitution of the State of Louisiana. "In access to public areas, accommodations, and facilities, every person shall be free from discrimination based on race,.., or national ancestry"; see Article I Section 12 Constitution of the State of Louisiana. Louisiana has provisions for equal protection and against racial discrimination, but they remain dormant as they are not enforced in this case. This Court has jurisdiction pursuant to violations of the 13th and 14th amendments to the U.S. Constitution and 28 U.S.C. sec. 1254(1).

STATEMENT OF THE CASE

1.

CAN THE STATE OF LOUISIANA AND ANY OF ITS PARISHES USE FEDERAL, STATE, OR LOCAL PROVISIONS TO ULTIMATELY ALLOW RACIAL DISCRIMINATION IN PUBLIC EDUCATION?

This case seeks the removal of the confederate rebels and battle flag from West Monroe High School as mascot. What valid reason does public education have for honoring the confederacy? They made slaves of African Americans! The confederacy has a long undeniable history of racial discrimination toward African Americans due to their slavery ancestry. "School board has affirmative duty

to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch"; see Monroe v. Board of Com'rs of City of Jackson, Tenn., 88 S.CT 1700, 391 U.S. 450, 20 L.Ed.2d 733, conformed to 427 F.2d 1005. As an African American, nothing is more "root" to racial discrimination than the confederacy imposing slavery on my ancestors. Likewise, nothing is more "branch" to racial discrimination than the continued perpetuation of confederate principles, and the likes of Jim Crow and the Klu Klux Klan. Still, Louisiana allows it parishes and cities to honor the confederacy in public education. In turn, this waters and fertilizes racial discrimination assuring its growth. It appears Louisiana thinks the confederacy has a good name to be cherished and uses public education to help preserve it. Or maybe Louisiana thinks it's affirmative duty is to take whatever steps necessary to preserve the perpetuation and emulation of confederate principles in public education? "Racial discrimination in state-operated schools is barred by the Constitution, and a state may not *induce, encourage or promote* private persons to accomplish what it is constitutionally forbidden to accomplish"; see Norwood v. Harrison, 93 S.Ct. 2804, 413 U.S. 455, 37 L.Ed2d 723, on remand 382 F.Supp. 921, opinion supplemented 410 F.Supp. 133, appeal dismissed 563 F.2d 722. Respondents counsel claim West Monroe High School has had no official connection with the confederacy or its symbols since 1990. However, every year they continue to allow its use even during the 2006-2007 school year, some 16 or 17 years later. The rebel as mascot, the onfederate rebel head on the school hallway floor, and West Monroe High School's confederate history continue to induce, encourage, and promote the confederate

rebel. This is nothing more than systematic racial discrimination ultimately. "Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake and is forbidden by the Constitution.(Per Mr. Justice Powell with the Chief Justice and three Justices concurring in the judgment in part; see Regents of University of California v. Bakke, 98 S.Ct. 2733, 438 U.S. 265, 57 L.Ed.2d 750. The preference of the confederacy is white racist only. This insures continued racial discrimination against African Americans because of slave ancestry. The confederacy has a long undeniable history of racial violence and discrimination toward African Americans. The honoring of the confederacy only undermines and stifles the removal of racial discrimination from public education. Provisions such as lack of standing, mootness upon graduation, and time barred which permit the honoring of the confederacy in public education are invalid and unconstitutional.

Lack of standing and Mootness

"A litigant can question a statue's validity only when so far as it is being or about to be applied to his disadvantage"; see Rindge Co. v. Los Angles County, 43 S.Ct. 689, 262 U.S. 700, 67 L.Ed. 1186. Lack of standing and mootness upon graduation are statues being applied to petitioner's disadvantage. These statues allow racial discrimination in public education. This causes chronic real, absolute, private and public injury to my person and personal rights and those of other African Americans. These injuries can be redressed by the removal of the confederate rebel mascot at West Monroe High School. A more appropriate mascot would not be connected to a hate group like the confederacy that perpetuates racial

discrimination. This would help heal injuries to my honor and dignity caused by the confederacy. Injury to my civil and private rights and rights for being a member of society can begin the healing process. The confederacy in public education causes breeches and violations of established rights for African Americans against racial discrimination.

Time Barred

"A state statue of limitations cannot destroy a claim because the period of actual contest over it in a federal tribunal extends beyond the limitation period"; see Order of Railroad Telegraphers v. Railway Express Agency, 64 S.Ct. 582, 321 U.S. 342, 88 L.Ed 788. If this Court and the courts below are federal tribunals, then time barred should not be allowed to deny this case. This case is about the elimination of racial discrimination in public education which has no limitation period that expires. "Exceptions in statues of limitations are framed to *prevent injustice* ..."; see Hangar v. Abbott, 73 U.S. 532, 6 Wall. 532, L.Ed 788. Louisiana alleges making an exception to time barred provisions to eliminate the confederacy in public education is inappropriate and invalid reasoning. It must be an injustice to the state of Louisiana to eliminate the confederacy from public education? U.S. Rep. Steve Cohen is urging House members to vote for a bill he introduced to apologize for slavery and Jim Crow discrimination.

Lack of Standing, Mootness, and Time Barred

"That statue promotes ultimate racial discrimination is sufficient to make it invalid"; see Anderson v. Martin, 84 S.Ct. 454, 375 U.S. 399, 11 L.Ed.2d 430.

Louisiana permits the use of lack of standing, mootness on graduation and time barred to allow the confederacy in public education. Given the undeniable history of the confederacy for racial discrimination, these provisions are nothing but systematic ultimate racial discrimination. "All provisions of federal, state, or local law requiring or permitting racial discrimination in public education must yield to principle that such discrimination is unconstitutional"; see U.S.C.A. Const. Amend. 14 and Brown v. Board of Educ. Of Topeka, Kan., 75 S.Ct. 753, 349 U.S. 294, 57 O.O. 253, 71 Ohio Law Abs. 584, 99 L.Ed. 1083, on remand 139 F.Supp. 468. Louisiana statues and provisions permit the confederacy in public education instead of allowing them to yield and eliminating racial discrimination. This is ultimate racial discrimination and unconstitutional. "Louisiana interposition statues which asserted that Supreme Court decisions in school segregation cases was usurpation of state power, and which purported to interpose state sovereignty were invalid"; see U.S. v. State of La., 81 S.Ct. 260, 364 U.S. 500, 5 .Ed.2d 245. Louisiana interposes state provisions over Supreme Court decisions and this permits racial discrimination in public education which is unconstitutional. *If petitioner were a student at West Monroe High School during a current school year, "lack of standing, mootness upon graduation, and time barred would not apply. Would honoring the confederacy as mascots and school names be racial discrimination in public education then? If yes, then respondents are guilty of* **ultimate racial discrimination in public education** *which make Louisiana provisions invalid and unconstitutional.*

2.

CAN THE STATE OF LOUISIANA AND ANY OF ITS PARISHES USE FRAUD TO ULTIMATELY ALLOW RACIAL DISCRIMINATION IN PUBLIC EDUCATION?

Louisiana wants this Court to believe the petitioner and other African Americans have always known the confederacy could be removed from public education. This is a misrepresentation by the state of Louisiana. Also, this is an attempt to mislead African Americans to rely on false statues and false provisions that consent to the confederacy in public education which is nothing but fraud! Petitioner never knew a claim could be filed to eliminate the racially discriminatory confederacy while attending West Monroe High School as the Mag. Judge Hayes alleges. Petitioner first learned that racial discrimination in public education was unconstitutional when he purchased the Supreme Court Digest in 2005! U.S.N.Y. 1946, "Where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part, the bar of statue of limitations does not begin to run until the fraud is discovered, though there may be no special circumstances or efforts on part of party committing fraud to conceal it from other party"; see Holmberg v. Armbrecht, 327 U.S. 392. U.S.Fla. 1880, "In action for relief on ground of fraud, the cause of action is not deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud"; see Coddington v. Pensacola & G. R. Co., 103 U.S. 409. "Where party asserts what he knows is false or does not no to be true to another's loss and his own gain, he is guilty of fraud"; see Philadelphia, W. & B.R. Co. v. Howard, 54 U.S. 307, 13 How. 307, 14 L.Ed.

157. When African Americans rely on false state provisions, this permits racial discrimination in public education. The state and confederacy make a gain while the African Americans take a loss, again fraud!

REASONS FOR GRANTING THE WRIT

1.

THE DECISIONS BELOW CONFLICTS WITH DECISIONS OF THIS COURT BY ALLOWING RACIAL DISCRIMINATION IN PUBLIC EDUCATION.

This Court's opinions and the U.S. Constitution are the law of the land. Louisiana denies obligations to this Court and the U.S. Constitution and permits ultimate racial discrimination in public education. This Court should give notice to Louisiana and other states, this Court and the U.S. Constitution are to be respected and obeyed, and that racial discrimination in public education is unconstitutional. These are appropriate reasons to grant this writ and reverse the decisions below. *What valid interest does the confederacy in public education as mascots and school names have in relation to the elimination of racial discrimination in public education?* No state should have the power to allow the honoring of the confederacy in public education as mascots or school name. This fosters ultimate racial discrimination and is very inappropriate. U.S. Fla. 1964, "Central purpose of equal protection clause was to eliminate racial discriminating emanating from official sources in the States", U.S.C.A. Const. Amend. 14; see McLaughlin v. State of Fla., 379 U.S. 184.

2.

THE IMPORTANCE OF THE ELIMINATION OF RACIAL DISCRIMINATION IN PUBLIC EDUCATION.

The elimination of the honoring of the confederacy as school names and mascots in public education benefits society as a whole. Its elimination **decreases areas** that promote racial discrimination and moves forward the goal of public education without racial discrimination. Furthermore, the confederacy's elimination decreases the amount of people exposed to the ideology of a confederate good name, with confederate principles that are to be cherished and perpetuated. Additionally, it would *decrease* racial discrimination overall. This gives children, parents and alumni a better foundation for racial respect and equality inside and outside of classrooms. These are valid and appropriate reasons to grant this writ and reverse the decisions below.

CONCLUSION

The petition for a writ of certiorari should be granted and resolved by a summarily reversal of the opinions below. This would send a stern message to Louisiana and other southern states that ultimate racial discrimination will no longer be tolerated in public education. The elimination of the honoring of the confederacy as school names and mascots from public education will send this message. It will also honor the **"Union Soldiers"** correcting that injustice and restoring them as the **true heroes** of the Civil War. West Monroe High School should not be allowed to honor the Confederate Rebels and their confederate flag. No public school should be allowed to honor the confederacy as school mascots and

names, as there is **no valid reason**. To honor the confederacy in public education is the same as honoring the Klu klux Klan and Jim Crow. It is a designed, systematic practice in "*ultimate racial discrimination*". *This* injures constitutional rights guaranteed to the individual and established as personal rights. Has the elimination of ultimate racial discrimination in public education, as well as society, become a frivolous, unreasonable, groundless issue in the federal court system?

Respectfully submitted,

RICKY EUGENE MINNIFIELD
Pro Se
302 Tanglewood Drive
Monroe, Louisiana 71202
(318) 330-9119

APPENDIX: TABLE OF CONTENTS

SUPREME COURT DIGEST
EXCERPTS THIS COURT 12-14

STEVE COHEN ARTICLE 14

APPEALS COURT OPINION
AND JUDGMENT 15-16

DISTRICT COURT JUDGMENT 17-18

MAGISTRATE JUDGE R&R 19-30

UNITED STATES SUPREME COURT DIGEST: VERBATIM QUOTES

Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake and is forbidden by the Constitution. (Per Mr. Justice Powell with the Chief Justice and three Justices concurring in the judgment in part.) Regents of University of California v. Bakke, 438 U.S. 265.

U.S. Miss. 1973. Racial discrimination in state-operated schools is barred by the Constitution, and a state may not induce, encourage, or promote private persons to accomplish what it is constitutionally forbidden to accomplish. Norwood v. Harrison, 413 U.S. 455.

U.S. La. 1960. Louisiana interposition statues which asserted that Supreme Court decisions in school segregation cases was usurpation of state power, and which purported to interpose state sovereignty were invalid. U.S. v. State of La. 364 U.S. 500.

U.S.Fla. 1964. Central purpose of equal protection clause was to eliminate racial discrimination emanating from official sources in the States. Mclaughlin v. State of Fla. 379 U.S. 184.

U.S.La. 1964. That statue promotes ultimate racial discrimination is sufficient to make it invalid. Anderson v. Martin, 375 U.S. 399.

School Board has affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. Monroe v. Board of Com'rs of City of Jackson, Tenn., 391 U.S. 450.

U.S. Dist.Col. 1955. All provisions of federal, state, or local law requiring or permitting racial discrimination in public education must yield

to principle that such discrimination is unconstitutional. U.S.C.A. Const. Amend. 14. Brown v. Board of Educ. of Topeka, Kan., 349 U.S. 294.

U.S.La. 1939. Equal protection to all is basic principle upon which rests justice under the law. U.S.C.A.Const. Amend 14. Pierre v. State of La., 306 U.S. 354.

U.S.Md. 1851. Where party asserts what he knows is false or does not know to be true, to another's loss and his own gain, he is guilty of fraud. Philadelphia, W & B.R. Co. v. Howard, 54 U.S. 307.

U.S. Cal. 1923. A litigant can question a statue's validity only when and so far as it is being or is about to be applied to his disadvantage. Rindge v. Los Angeles County, 262 U.S. 700.

U.S.Ga. 1944. A state statue of limitations cannot destroy a claim because the period of actual contest over it in a federal tribunal extends beyond the limitation period. Order of Railroad Telegraphers v. Railway Express Agency, 321 U.S. 342.

U.S.N.Y. 1946. Where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his own part, the bar of statue of limitations does not begin to run until the fraud is discovered, though there may be no special circumstances or efforts on part of party committing fraud to conceal from other party", see Holmberg v. Armbreecht, 327 U.S. 392.

U.SArk. 1867. Exceptions in statues of limitations are framed to prevent injustice and never to encourage laches or to promote negligence. Hanger v. Abbott, 73 U.S 532.

U.S.Fla. 1880. In an action for relief on ground of fraud, the cause of action is not deemed to have accrued until the discovery by the aggrieved

party of the facts constituting the fraud, see Coddington v. Pensacola & G. R. Co., 103 U.S. 409.

U.S.Va. 1879. One purpose of the 13th and 14th amendments to the federal constitution, U.S.C.A., was to raise the colored race from the condition of inferiority and servitude into perfect equality of civil rights with all other persons within the jurisdiction of the states. Ex parte Common wealth of Virginia, 100 U.S. 339.

U.S.Iowa 1969. Right to recover damages sustained through breach of duty sprang from principle of common law and was left to be enforced accordingly. Crane v. Cedar Rapids & I. C. Ry. Co., 395 U.S. 164.

STEVE COHEN ARTICLE

White congressman urges slavery apology: Memphis, Tenn—U.S. Rep. Steve Cohen is urging House members to vote for a bill he has introduced to apologize for slavery and Jim Crow discrimination. Cohen commended the Virginia General Assembly which voted unanimously on Saturday to express "profound regret" for the state's role in slavery. Sponsors of the Virginia resolution say they know of no other state that has apologized for slavery.(2007).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-30738
Summary Calendar

RICKY EUGENE MINNIFIELD,

Plaintiff-Appellant,

versus

LOUISIANA DEPARTMENT OF EDUCATION;
SCHOOL BOARD OF OUACHITA PARISH;
WEST MONROE HIGH SCHOOL,

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:05-CV-02074

Before KING, HIGGINBOTHAM, and GARZA,
Circuit Judges.
PER CURIAM:

Pro se Plaintiff Ricky Minnifield alleges that the West Monroe High School mascot, a confederate rebel, manifests state-sponsored discrimination in violation of both the Louisiana and United States Constitution. Citing these same constitutional provisions, Minnifield also complains that during his years at West Monroe High, the school used the confederate battle flag on its yearbook, on its cheerleader uniforms, and on the school building itself. In the early 1990s, the school stopped all officially sanctioned use of the flag, though the rebel

mascot remains. The plaintiff seeks compensatory and punitive damages totaling $22 million and injunctive relief.

Plaintiff graduated from West Monroe High in 1975, and he has no children attending the school. The district court properly dismissed for lack of standing his claim for injunctive relief. That claim was mooted upon graduation. See Doe v. Marshall, 622 F.2d 118, 119 (5th Cir. 1980) ; Newdow v. United States Congress, Elk Grove Unified School District, et al, 542 U.S. 1 (2004). Likewise, the district court properly dismissed as time-barred plaintiff's claim for damages under section 1983. See Jacobsen v. Osborne, 133 F.3d 315 , 319 (5th Cir 1998); Peter Henderson v. City of Port Arthur, 806 F.2d 1273, 1275 (5th Cir. 1987). Such claims accrue when the plaintiff has reason to know of the actionable injury. See Kline v. North Texas State University, 782 F.2d 1229 (5th Cir. 1986).

AFFIRMED

Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

RICKY EUGENE MINNIFIELD
CIVIL ACTION NO. 05-2074

VS.
JUDGE JAMES

LOUISIANA DEPARTMENT OF
MAGISTRATE JUDGE HAYES
EDUCATION, ET AL

JUDGMENT

The Report and Recommendation of the Magistrate Judge [Doc. No. 30] having been considered, together with the written objections thereto filed with this Court, and, after a de novo review of the record, finding that the Magistrate Judge's Report and Recommendation is correct and that judgment as recommended therein is warranted,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that School Board's Motion to Dismiss (Doc. #24) be GRANTED, and his matter DISMISSED WITH PREJUDICE as to the School Board for mootness, lack of standing, and for failure to state a claim for which relief may be granted.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, taking cognizance of this court's lack of subject matter jurisdiction over the remaining claims, that the remaining claims are DISMISSED WITH PREJUDICE in their entirety for lack of standing.

IT IS FURTHER ORDERED that the School Board be awarded reasonable attorney's fees and costs.

THUS DONE AND SIGNED this 23 day of June, 2006, in Monroe, Louisiana.

/s/

ROBERT G. JAMES

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

RICKY EUGENE MINNIFIELD
CIVIL ACTION NO. 05-2074
VS
JUDGE JAMES

LOUISIANA DEPARTMENT OF
EDUCATION, ET AL
MAGISTRATE JUDGE HAYES

REPORT & RECOMMENDATION

Before the undersigned Magistrate Judge, on reference from the District Court, is a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) (Doc. #24) filed by defendant, School Board of Ouachita Parish ("School Board"). Pro se plaintiff, Ricky Eugene Minnifield ("Minnifield") has not filed an opposition to the motion. For the reasons stated below, it is recommended that the School Board's Motion to Dismiss (Doc. # 24) be GRANTED.

BACKGROUND

Plaintiff filed suit against the Louisiana Department of Education, Ouachita Parish School Board and West Monroe High School alleging that the Defendants' use of the confederate rebels mascot is racial discrimination and unconstitutional in public education and state-operated schools. Plaintiff claims that Defendants' "have and continue to induce, encourage, and promote racial discrimination by allowing West Monroe High School to have the

Confederate rebels mascot". Plaintiff claims that he has experienced humiliation, emotional distress, and mental anguish as well as "continued feelings of disappointment, emotional deterioration and rupture" "due to public education's promotion of the glorification of slavery". Minnifield seeks declaratory and injunctive relief as well as $22,000,000.00 in compensatory and punitive damages.

The School Board has filed the current Motion to Dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. The School Board also seeks recovery of attorney fees and costs.

LAW AND ANALYSIS

Motion to Dismiss for Lack of Subject Matter Jurisdiction under F.R.C.P. 12(b)(1)

"A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case". Home builders Ass'n of Miss., Inc. v. City of Madison, 143 F.3d 1006, 1010 (5th Cir. 1998 (quoting Nowak v. Ironworkers local 6 Pension Fund, 81 F.3d 1182, 1187 (2nd Cir. 1996). The party seeking to invoke federal jurisdiction bears the burden of demonstrating its existence. See Ramming v. United States, 281 F.3d 158, 161 (5th Cir.2001), cert. denied, 536 U.S. 960 (2002); Howery v. Allstate ins. Co., 243 F.3d 912, 916 (5th Cir. 2001), cert. denied, 534 U.S. 993 (2001). In fact, "there is a presumption against subject matter jurisdiction that must be rebutted by the party bringing an action to federal court". Coury v. Prot., 85 F.3d 244, 248 (5th Cir.

1996) (citing Strain v. Harrelson Rubber Co., 742 F.2d 888, 889 (5th Cir. 1984)).

"Attacks on subject matter jurisdiction under Fed. R. Civ.P. 12(b)(1) come in two forms: 'facial attacks' and 'factual attacks'". Garcia v. Copenhaver, Bell & Assics., M.D.'s P.A., 104 F.3d 1256, 1260-1 (11th Cir. 1997) (citing Lawerence v. Dunbar, 919 F.2d 1525, 1528-9 (11th Cir. 1990); see Williamson v. Tucker, 645 F.2d 404, 412 (5th Cir. 1981). Facial attacks on the complaint "require the court merely to look and see if the plaintiff has sufficiently alleged a basis of subject mater jurisdiction, and the allegations in his complaint are taken as true for purposes of the motion". Lawenence v. Dunbar, 919 F.2d 1525, 1529 (5th Cir. 1990) (quoting Menchaca v. Chrysler Credit Corp., 613 F.2d 507, 511(5th Cir. 1980), cert. denied, 449 U.S. 953 (1980) (citing Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3rd Cir. 1977). "Factual attacks,' on the other hand, challenge 'the existence of subject matter jurisdiction in fact, irrespective of the pleading, and matters outside the pleadings, such as testimony and affidavits, are considered". Id.

Mootness

The School Board first argues that the claims against it are moot because Minnifield graduated from West Monroe High School in 1975 and has no children attending West Monroe High School. "Mootness is a jurisdictional question because the Court is not empowered to decide moot questions or abstract propositions, ... our impotence to review moot cases derives from the requirement of Article III of the Constitution under which the exercises of judicial power depends upon the existence of a case

or controversy". North Carolina v. Rice, 404 U.S. 244, 246, (U.S. 1971) (internal citations and quotations omitted).

_____The School Board argues that a case is moot when a plaintiff complains of certain activities at a school and subsequently graduates from that school. However, the cases presented by the School Board in support of this contention sought only injunctive relief, not damages. See Doe v. Madison School District No 321, 177 F.3d 789, 797 (9th Cir. 1999) ("the student-plaintiff graduated. ... Because we cannot remedy the student plaintiff's injury with injunctive or declaratory relief, the student-plaintiff's claim for those forms of relief are moot".)

Minnifield is seeking declaratory or injunctive relief. The School Board correctly argues that since Minnifield graduated from West Monroe High School over thirty years ago, and has no children attending West Monroe High School, his claims for declaratory or injunctive relief are moot. However, Minnifield is also seeking compensatory and punitive damages; therefore, the mootness doctrine does not apply to those claims, and further analysis is required.

Standing

The School Board also argues that Minnifield's claims should be dismissed because he lacks standing. "The doctrine of standing is distinguishable from that of mootness. The Supreme Court has acknowledged mootness as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)". Pederson v. Louisiana State

University, 213 F.3d 858, 869 (5th Cir.2000). (internal citations and quotations omitted).

Article III of the United States Constitution requires that a litigant have standing to invoke the power of a federal court. "To demonstrate standing, the plaintiff must show an injury in fact, a requirement assuring that the court will not pass upon ... abstract, intellectual problems, but will adjudicate concrete, living contest[s] between adversaries. The injury alleged must be actual or imminent and not abstract, conjectural, or hypothetical". Dov v. Beaumont Independent School Dist., 240 F.3d 462, 466 (5th Cir. 2001) quoting Federal Election Com'n v. Akins, 524 U.S. 11, 20, 118 S.Ct. 1777, 141 L.Ed.2d 10 (1998) (internal quotations omitted). Furthermore, "[t]o have standing a plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief". (emphasis added) National Park Hospitality Ass'n v. Department of Interior, 538 U.S. 803, 815, 123 S.Ct. 2026, 155 L.Ed.2d 1017 (2003) Allen v. Wright, 468 U.S. 737, 751, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984). Finally, the United States Supreme Court has developed prudential limitations on standing, including a requirement that a litigant generally must assert his or her own legal rights and interest and cannot rest a claim to relief in the legal rights or interest of third parties. Warth v. Seldin, 422 U.S. 490, 499, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Ward v. Santa Fe Independent School Dist., 393 F.3d 599, 606 (5th Cir. 2004).

To have standing, Minnifield must first show that he suffered a injury in fact. There must be a 'personal stake in the outcome' such as to 'assure that

concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions'. ... Abstract injury is not enough. It must be alleged that the plaintiff 'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged statue or official conduct. The injury or threat of injury must be both 'real and immediate', 'not conjectural' or 'hypothetical'. O'Shea v. Littleton, 414 U.S. 488, 493-494 (U.S. 1974).

Minnifield alleges that he continues to experience humiliation, emotional distress, and mental anguish due to public education's promotion of the glorification of slavery. The defendants continue to act in a conscious disregard for [his] rights. ... The Confederate Rebels continue to oppress [his] rights. ... defendants ... attempt to induce [him] to give up his legal rights to be free from discrimination ... [and he] has suffered continued feelings of disappointment and emotional deterioration and rupture due to public education's promotion of the glorification of slavery. Complaint (Doc. # 1 pg. 4 – para. 6).

Minnifield's claims of injury are conjectural statements unsupported by any factual allegations. Minnifield argues that the rebel mascot offends him; however, in order to have standing, Minnifield must present some factual basis, not just conclusory statements, to support a claim that he has actually been injured by West Monroe High School's use of the rebel mascot. _____ Indeed, it appears unlikely that any individual could present facts to support a claim of actual injury as the result of a school's choice of mascot.

Plaintiff has failed to show that he has suffered an injury in fact and he therefore lacks standing to bring these claims. Since Minnifield lacks standing, IT IS RECOMMENDED that the School Board's Motion to Dismiss (Doc. # 24) be GRANTED, and the matter DISMISSED WITH PREJUDICE as to the School Board. Furthermore, in as much as this court has the duty to raise the question of subject matter jurisdiction sua sponte under Rule 12(b)(1). See Bridgmon v. Array Systems Corp., 325 F.3d 572, 575 (5th Cir. 2003). IT IS FURTHER RECOMMENDED that Minnifield's claims be dismissed as to All defendants because Minnifield lacks standing and consequently, this court has no subject matter jurisdiction.

Prescription

In the alternative, the School Board contends that Minnifield's complaint fails to state a claim and must be dismissed because it is time-barred. The School Board has filed this argument as a Motion to Dismiss; however, since the School Board is relying on documentation outside the pleadings, the Court will construe the motion as a Motion for Summary Judgment.

Summary Judgment Standard

Summary Judgment is appropriate when the evidence before the Court shows that no genuine issue as to any material fact exists and that the moving party is entitled to judgment as a matter of law. F.R.C.P. Rule 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). An issue is "genuine" under this standard if the non-moving party has presented sufficient evidence that a reasonable jury

could return a verdict in his favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)

The moving party bears the initial burden in summary judgment and must demonstrate through portions of the pleadings, depositions, answers to interrogatories, admissions, and/or affidavits that no genuine issue of material fact exists. Celotex Corp., 477 U.S. at 323. Once the moving party has successfully demonstrated the absence of a genuine issue of material fact, the burden shifts to the non-moving party to show the opposite. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In doing so, the non-moving party may not merely rely on the allegations, and conclusions contained within the pleadings; rather, he "must go beyond the pleading and designate specific facts in the record showing that there is a genuine issue for trial". Wallace v. Texas Tech Univ., 80 F.3d 1042, 1047 (5th Cir. 1996). Furthermore, these specific facts must be shown through something more than "some metaphysical doubt as to the material facts, by conclusory unsubstantiated allegations, or by a mere scintilla of evidence". Little v. Liquid Air. Corp., 37 F.3d 1069, 1075 (5th Cir. 1994). Ultimately, however, the court must resolve all doubts against the moving party and draw any reasonable inferences raised by the evidence in favor of the non-moving party. See Gowesky v. Singing River Hosp. Sys., 321 F.3d 503, 507 (5th Cir. 1999).

Minnifield contends that the "defendants have and continue to induce, encourage, and promote Racial Discrimination by allowing West Monroe High School to have the Confederate rebels mascot". Complaint (Doc. #1 pg. 2-para. 2). In addition to monetary damages, Minnifield requests that West Monroe High School change its mascot prior to the

2006-2007 school year , and to "remove any Confederate connected mascots or school named for the confederacy from the Louisiana public education system prior to the 2006-2007 school year". Complaint (Doc. #1 pg. 5-para. 8).

Minnifield's Complaint alleges that this Court has jurisdiction over this action "pursuant to the 14th Amendment to the Constitution of the United States which prohibits Racial Discrimination in Public Education as a fundamental right". Complaint (Doc. #1 pg.1-para. 1). Pro se complaints are to be liberally construed. Johnson v. Atkins, 999 F.2d 99, 100 (5th Cir. 1993). Therefore, it is assumed that Minnifield intended to pursue is claims under 42 U.S.C.A. sec. 1983. Section 1983 provides in pertinent part: Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress. 42 U.S.C.A. sec. 1983.

The statue of limitations to be applied in sec. 1983 cases is the state statue of limitations governing actions for personal injury in the forum state. Wilson v. Garcia, 471 U.S. 261, 276-280 (1985). Therefore, pursuant to Louisiana's law governing personal injury actions, a one-year statue of limitations governs sec. 1983 claims. Jacobsen v. Osborne, 133 F.3d 315, 319 (5th Cir. 1998). Section 1983 actions accrue when the injured party knows or has reason to know of the injury which forms the basis for the

action". Peter Henderson Oil Co. v. City of Port Arthur, Tex., 806 F.2d 1273, 1275 (5th Cir. 1987).

Minnifield testified in his deposition that he was born on January 17, 1957 (Depo. pg. 11) and that he attended West Monroe High School from 1972-1975 (Depo. pg. 22). Minnifield stated that he graduated from West Monroe High School on his 18th birthday January 17, 1975. (Depo. pg. 52 and 104). Throughout his deposition, Minnifield discussed the disdain he felt as a student for the rebel mascot and what he perceived to be offensive symbolism. (Depo. pg. 79-83). Minnifield did not file a formal complaint about the school's mascot while he was a student, (Depo. pg. 92) and did not complain to the school superintendent or a school board member until recently. (Depo. pg. 93-102).

Minnifield graduated from West Monroe High School more than 31 years ago, and according to his own testimony, knew or had reason to know of his claims well before his graduation. Since the one-year statue of limitations to bring sec. 1983 claims has clearly passed, IT IS RECOMMENDED IN THE ALTERNATIVE that the School Board's Motion for Summary Judgment be GRANTED and Minnifield's complaint be dismissed as time-barred.

Attorney's Fees

The School Board has requested attorney's fees. Under 42 U.S.C.A. sec. 1983, the district court may, in its discretion, award attorney's and costs to the prevailing party in sec. 1983 litigation. See 42 U.S.C.A. sec. 1983. While such relief is typically awarded to prevailing plaintiffs, a prevailing defendant may recover attorney's fees "when a

plaintiff's underlying is frivolous, unreasonable, or groundless". United States v. State of Mississippi, 921 F.2d 604, 609 (5th Cir. 1991), citing Christiansburg Garmet Co. v. EEOC 434 U.S. 412, (1978). Not only does Minnifield lack standing and any factual basis for a claim of injury resulting from the school's mascot choice, but the statue of limitations over any possible claim has long since expired. Minnifield's complaint is clearly frivolous. IT IS THEREFORE RECOMMENDED that the School Board's Motion for Attorney's fees be GRANTED and that it be awarded reasonable attorney's fees and costs

Under the provisions of 28 U.S.C. sec. 636(b)(1)(C) and FRCP Rule 72(b), the parties have ten (10) business days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objection within ten (10) business days after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the District Judge before he makes a final ruling.

A PARTY'S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UNOBJECTED – TO PROPOSED FACTUAL

FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

THUS DONE AND SIGNED at Monroe Louisiana, this 30th day of May 2006.

KAREN L. HAYES
U.S. MAGISTRATE JUDGE